

REMARKS

The Office Action dated July 7, 2005 has been received and carefully considered. Reconsideration of the outstanding rejections in the present application is respectfully requested based on the following remarks.

Allowance of Claims 5-9

Applicant notes with appreciation the indication on page 5 of the Office Action that claims 5-9 are allowed.

Anticipation Rejection of Claims 10-21 and 29-31

At page 3 of the Office Action, claims 10-21 and 29-31 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Hinchley (U.S. Patent No. 6,490,250). This rejection is hereby respectfully traversed.

As explained in Applicant's Response To Office Action of May 9, 2005, Hinchley fails to disclose each and every element of independent claims 10 and 29, and also fails to disclose each and every element of claims 11-21 and 30-31 at least by virtue of their dependence on claims 10 and 29, respectively.

Claim 10, from which claims 11-21 depend, recites the elements of "determining a desired bit-rate of a received transport stream" and "determining a current bit-rate of the received transport stream." Hinchley does not disclose receiving a transport stream. The portions of Hinchley cited by the examiner do not disclose that a transport stream is received. Hinchley is clear that element 900 of FIG. 9 and element 1000 of FIG. 10 refer to elementary data streams rather than transport streams. *Hinchley*, col. 8, lines 8-12 and col. 8, lines 31-33. One of ordinary skill in the art will appreciate that an elementary data stream is not the same as or equivalent to a transport stream. Instead, the system of Hinchley receives multimedia data from a data source. Multimedia encoders encode the data into an MPEG format. The encoders generate "elementary data streams" that are provided to a processor, where they are combined into a transport stream. *See Hinchley*, col. 3, line 3-col. 4, line 17. Thus, Hinchley teaches *generating* a transport stream, rather than *receiving* a transport stream. Hinchley further discloses that the data rate of the elementary streams may be adjusted to a desired data rate. *Hinchley*, col. 8, lines 8-44. The elementary streams are combined into a transport stream for

transmission. *Hinchley*, col. 2, lines 4-24. The transport stream disclosed in *Hinchley* is not “received”, as recited in Claim 1 and therefore *Hinchley* fails to disclose the features of determining a desired bit-rate of a received transport stream and determining a current bit-rate of the received transport stream as recited by claim 10.

The Final Office Action asserts at page 2 that the specification does not provide “a limiting definition of ‘transport stream’ such that it would differentiate the term from the elementary data streams *Hinchley* uses.” However, *Hinchley* itself expressly differentiates between a transport stream and an elementary data stream. Specifically, at col. 5, lines 57-61, *Hinchley* states “the multimedia processor 250 is capable of determining whether a stream is an elementary stream, program stream, or transport stream, all of which must be formatted differently, and is capable of determining the byte size used in a current stream.” Thus, according to *Hinchley*, an elementary stream is different from a transport stream *and must be formatted differently*. Accordingly, *Hinchley* does not disclose “determining a desired bit-rate of a received transport stream” and “determining a current bit-rate of the received transport stream” as recited by claim 1.

With respect to claims 11-21, these claims depend from claim 10. Accordingly, *Hinchley* fails to disclose each and every element of these claims at least by virtue of their dependence on claim 10. Moreover, these claims recite additional features not disclosed by *Hinchley*.

For example, claim 12 recites that “the throttle amount includes an amount of time to wait before transmitting a portion of the transport stream.” *Hinchley* does not disclose this element. Instead *Hinchley* discloses that a “rate recommendation control signal” is provided to a data rate optimizer. *See Hinchley*, col. 7, lines 3-9. The data rate optimizer provides control or data feedback signals for the encoders that encode the elementary data streams. *See Hinchley*, col. 7, lines 11-17. The data feedback signals “disable[es] existing delays, increasing the rate at which data is fed into the encoders 208 or increasing the number of bits per macroblock, frame, or group of frames.” *Hinchley*, col. 7, lines 17-20. Thus, *Hinchley* does disclose a throttle amount that includes an amount of time to wait before transmitting a portion of the transport stream. Instead *Hinchley* discloses removing delays to an encoder of an elementary data stream. Accordingly, *Hinchley* fails to disclose each and every element of claim 12.

With respect to claim 18, the claim recites “wherein the signal includes an interrupt.” *Hinchley* does not disclose an indicator requesting a throttle amount, where the indicator

includes a hardware signal that includes an interrupt. As explained above, Hinchley instead discloses a "rate recommendation control signal." There is no disclosure in Hinchley that the rate recommendation signal includes an interrupt. Accordingly, Hinchley fails to disclose each and every element of claim 18.

With respect to claim 19, the claim recites "wherein the indicator includes a software signal." Hinchley does not disclose an indicator requesting a throttle amount, where the indicator includes a software signal. As explained above, Hinchley instead discloses a "rate recommendation control signal." There is no disclosure in Hinchley that the rate recommendation signal includes a software signal. Accordingly, Hinchley fails to disclose each and every element of claim 19.

With respect to claim 20, the claim recites "wherein providing the indicator is only performed when a difference between the desired bit-rate and the current bit-rate is greater than a predetermined value." This element is not disclosed by Hinchley. Hinchley discloses providing "a rate recommendation control signal 734 to indicate whether the system 120 is operating below, at, or above the maximum or target throughput 226." *Hinchley*, col. 7, lines 3-5. Thus, the rate recommendation control signal of Hinchley indicates only whether the system 120 is operating below, at, or above a target rate, and does not indicate whether the system is operating at a rate greater than a predetermined value. Accordingly, Hinchley fails to disclose each and every element of claim 20.

With respect to claim 29, the claim recites a program of instructions to "determine a desired bit-rate of a received transport stream" and to "determine a current bit-rate of the received transport stream." As discussed above with respect to claim 10, Hinchley fails to disclose these elements. Accordingly, Hinchley fails to disclose each and every element of claim 29.

Claims 30 and 31 depend from claim 29. Therefore Hinchley fails to disclose each and every element of claims 30 and 31, at least by virtue of their dependency on claim 29. Moreover, these claims recite additional features not disclosed by Hinchley.

For example, with respect to claim 31, the claim recites "wherein the throttle amount is an amount of time to suspend a transmission of the received transport stream." As explained above with respect to claim 12, Hinchley does not disclose a throttle amount that includes an

amount of time to suspend transmission of a transport stream. Accordingly, Hinchley fails to disclose each and every element of claim 31.

In view of the foregoing, it is respectfully submitted that the Office Action fails to establish that Hinchley discloses or suggests each and every element of claims 10-21 and 29-31. Accordingly, it is respectfully submitted that the rejection of claims 10-21 and 29-31 is improper at this time and withdrawal of this rejection therefore is respectfully requested.

Conclusion

The Applicants respectfully submit that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

The Applicants believe no additional fees are due, but if the Commissioner believes additional fees are due, the Commissioner is hereby authorized to charge any fees, which may be required, or credit any overpayment, to Deposit Account Number 50-0441.

Respectfully submitted,

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Date



Adam D. Sheehan; Reg. No. 42,146
TOLER, LARSON & ABEL, L.L.P.
5000 Plaza On The Lake, Suite 265
Austin, Texas 78746
(512) 327-5515 (phone)
(512) 327-5452 (fax)